



## NextWave Telecom Inc.

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November 26, 2003

Katherine M. Harris  
Deputy Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Washington, D.C. 20555

### Re: WT Docket No. 03-217

Dear Ms. Harris:

This letter responds to your November 12, 2003, request issued in the above-referenced proceeding pursuant to Section 308(b) of the Communications Act, as amended, that directs NextWave Personal Communications Inc. and NextWave Power Partners Inc. (collectively, "NextWave" or the "Company"), and Cingular Wireless LLC ("Cingular") to answer three questions in order to assist the Commission in making a determination on applications pending in that proceeding, including, if necessary, a waiver request associated with those applications. NextWave's answers appear below.

Question (1): Describe how the "FCC Direct Payment" referenced in the "Term Sheet for Agreement Regarding the § 363 Sale of Rights and Interests In Certain Licenses" ("Term Sheet") and the request for waiver of sections 1.2111 and 24.714 of the Commission's rules should be apportioned among the "Designated Licenses."

Answer: The August 4, 2003, Term Sheet embodies a settlement agreement entered into by the Department of Justice on behalf of the Commission, NextWave, the Official Committee of Unsecured Creditors in the Company's bankruptcy reorganization, and the administrative agent and lender under NextWave's debtor-in-possession financing at that time. Should the pending license assignment applications be granted, the U.S. government will receive the "FCC Direct Payment" in addition to the release by the non-government signatories (and by their associated constituencies) of numerous legal claims they hold against the government, either individually or collectively, for acts committed during the reorganization. The Term Sheet has been approved by the Department of Justice.

The Term Sheet provides that, in exchange for the combination of benefits the government will receive thereunder, including the FCC Direct Payment, the Commission and the U.S. government will release any and all claims they hold that are associated with the Designated Licenses, including financial claims, subject to an exception for actions by the Commission pursuant to its regulatory authority.

Absent the settlement embodied in the Term Sheet, the amount of any government financial claim associated with the Designated Licenses would be unknown, and would remain unknown until such time as the non-governmental signatories' claims were resolved through litigation or otherwise, a process that could take years. The Term Sheet represents a unified reduction and settlement of numerous different claims. It was not intended to reflect an apportionment of funds among particular claims held by the individual signatories.

Sections 1.2111 and 24.714 of the Commission's rules require installment payment licensees to settle accounts with the government regarding auction-related debt obligations as a precondition to gaining approval of a request to assign an installment payment license to a non-designated entity. The rules call for "full payment" but do not bind the Commission to any particular mechanism or formula for calculating such amount. Nor do the rules prohibit the Commission from accepting a single sum reflecting an amount that has been established as the full amount owed, adjusted for resolution of all claims, both by and against the Commission, relating to a license. The Joint Applications provide ample legal and factual reasons why, in the unique circumstances of this proceeding, the Commission may, and should, either state that the FCC Direct Payment constitutes the payment required under Sections 1.2111 and 24.714, or waive such rules to the extent necessary to grant the applications. Either of those actions would be fully in concert with the Commission's independent regulatory authority and responsibilities under the Communications Act.

Question (2): Provide evidence for the representations stated in the request for waiver, including the representations made in footnotes 3 and 30 and accompanying text of the request, that the Department of Justice has approved the Term Sheet in accordance with its authority under the Debt Collection Improvement Act of 1996.

Answer: The Department's approval of the Term Sheet is demonstrated by oral representations made by an authorized Department representative in bankruptcy court hearings. A true and correct copy of relevant portions of a transcript of one such bankruptcy court hearing is included with this response.<sup>1</sup> To the best of NextWave's knowledge, the Department's approval is grounded on its authority under the Federal Claims Collections Act, as amended by the Debt Collection Improvements Act of 1996.

Question (3): Describe specifically how any exercise by the Department of Justice of its authority under the Debt Collection Improvement Act of 1996 impacts the Commission's resolution of the request for waiver of sections 1.2111 and 24.714 of the Commission's rules.

Answer: To the best of NextWave's knowledge, no statute or legal precedent conclusively determines the interaction between the Department's authority to settle claims on behalf of the United States and the Commission's waiver authority under the Communications Act. There is no doubting, however, that the Department's approval of the Term Sheet was a valid and lawful action based on an assessment that the Settlement Agreement, and the resolutions provided therein, including the amount of the FCC Direct Payment, will benefit the public. It is legally appropriate and entirely fair for the Commission to take the Department's action – and an assessment that the Settlement Agreement and the

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<sup>1</sup> Enclosure – Transcript of Hearing Re Approval of Sale Before the Honorable Adlai S. Hardin, Jr., Case No. 98-21529, August 21, 2003 at 10-11 (U.S. Bkptcy, S.D.N.Y.). The representations were made by Assistant U.S. Attorney David Kennedy. See *id.*, at 11 ("Ms Schrier-Rape is correct that the Department of Justice has signed off on the term sheet; that was one of the conditions.").

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proposed transaction will benefit the public -- into account in exercising its independent regulatory authority under the Communications Act, and no party to the pending assignment proceeding has claimed otherwise.

NextWave has made every attempt to provide full and complete responses to the three questions, and stands ready to provide whatever additional information the Commission believes would assist it in acting on the pending assignment requests.

Sincerely,



Michael R. Wack

Enclosures

cc: Robert S. Foosner  
Regina M. Keeney  
Henry Goldberg  
David G. Richards

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of: : Case No. 98-21529  
: :  
: :  
NEXTWAVE PERSONAL COMMUNICATIONS, INC., :  
Debtor. : 300 Quarropas Street  
: White Plains, New York  
: August 21, 2003  
: :  
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TRANSCRIPT OF HEARING ON BIDDING  
BEFORE THE HONORABLE ADLAI S. HARDIN, JR.  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: DEBORAH SCHRIER-RAPE, ESQ.

For the U.S. Trustee: PAMELA LUSTRIN, ESQ.

For the FCC: DAVID KENNEDY, ESQ.

Court Transcriber: DONNA K. CHERTKOW  
TypeWrite Word Processing Service  
356 Eltingville Boulevard  
Staten Island, New York 10312

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 Honor, there are specific provisions -- two other provisions,  
2 the FCC term sheet that are significant. One is that if there  
3 are higher bids following the 1.4, the next hundred million  
4 comes to the estate, and then following that if there were bids  
5 above \$1.5 billion, the FCC gets an additional 34 percent of  
6 proceeds up to \$20 million.

7 THE COURT: Mm-hmm (affirmative).

8 MS. SCHRIER-RAPE: So the FCC could get from the sale  
9 of these licenses on a higher, better offer \$734 million.

10 I believe, Your Honor, those are the significant  
11 aspects of the FCC term sheet other than it does provide that  
12 the FCC and the Debtors and the constituencies on both sides,  
13 which would include all of Nextwave's creditors, would be, with  
14 respect to these licenses, giving each other complete releases  
15 so that any claims either would have against the other or  
16 constituencies would have as being creditors of Nextwave  
17 against the FCC, or the FCC vice versa, are -- we'd -- we would  
18 be asking the Court to enter an order asking -- at the sale  
19 hearing that would guide comprehensive mutual releases on this  
20 segment of licenses, though not on any of the others.

21 THE COURT: All right. Any comments or questions  
22 before we -- with regard to the statement that you just made  
23 before we get to the actual --

24 MR. KENNEDY: Yes, Your Honor. David Kennedy from  
25 the U.S. Attorney's Office representing the FCC.

1           Your Honor, as Ms. Schrier-Rape has indicated, we've  
2 all worked very hard to present a consensual resolution of many  
3 of the issues pertaining to these licenses, and that is  
4 reflected in the term sheet. And I think that if anyone wants  
5 to understand that's what the term sheet says, they should  
6 simply look at it. And of course, that's been attached to the  
7 motion.

8           Ms. Schrier-Rape is correct that the Department of  
9 Justice has signed off on the term sheet; that was one of the  
10 conditions.

11           THE COURT: Mm-hmm (affirmative).

12           MR. KENNEDY: The other condition goes to the FCC  
13 regulatory approval. That is something that the Debtors or  
14 perhaps in this case Cingular are not sure what the regulatory  
15 process is, will have to work on after the sale.

16           THE COURT: Mm-hmm (affirmative).

17           MR. KENNEDY: So Your Honor did ask a question that I  
18 think went to the regulatory issue, which is the splitting up  
19 of megahertz. That is sort of more of a regulatory kind of  
20 question that the FCC will have to address later. And once the  
21 sale is complete, then the FCC regulatory approval can be  
22 sought. Nothing that we are doing here kind of requires the  
23 FCC to make particular regulatory decisions.

24           THE COURT: All right.

25           MR. KENNEDY: But other than those two significant

## CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of November, 2003, caused to be served two copies of the foregoing Response to November 12, 2003 Letter from Katherine M. Harris in WT Docket No.: 03-217 by first-class mail, postage prepaid, on:

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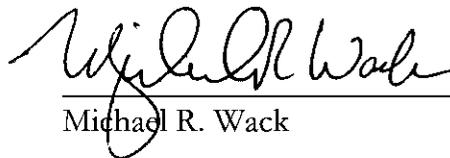
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Michael R. Wack